IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1533 OF 2004

Chhabiram Baburam Sharma ... Petitioner

Vs.

State of Maharashtra & Ors. Respondents

Mr. E.K. Sasidharan for Petitioner.

Mr. G.W. Mattos, A.G.P. for Respondent Nos. 1 and 2.

Mr. K.A. Chotani for Respondent Nos. 3 and 4.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 08, 2004

P.C.

. Rule. Heard forthwith.

. Petitioner has filed the present petition as President of the Mumbai Zopadpatti Rahivasi Sangh to quash and set aside the order dated 6.1.2004. By that order the Additional Collector held that the structures of Respondent Nos. 3 and 4 were existing prior to 1995. It was further held that on technical grounds photopasses of these structures were earlier cancelled by the then Additional Collector. An appeal had been preferred by them. Housing Department vide letter dated 11.12.2001 was pleased to issue directions to Additional Collector stating that structures in dispute were eligible for protection under the State Government policy. Hence, to issue photopass after verifying the documents. Photopasses according to learned Additional Collector were not

issued to these structure holders inspite of the above order because the process of issuing photopasses was in process and their office did not reach to the commercial section of hutments. Petitioner had made a complaint to the Housing Department. A meeting was held on 13.10.2003. The Principal Secretary issued directions to issue photo passes after verification of documents. The learned Additional Collector held that on verification of documents, he has found that two structures of Respondent Nos. 3 and 4 are prior to 1995. There were transfer in the ownership which should be regularised and in the light of that issued directions to the Deputy Collector to issue photo passes after recovering of transfer fees and other Government dues prescribed under the Government Resolution. It is this order which is the subject matter of the present petition. The Petitioner herein was party to the proceedings. However, his designation from the records produced does not show that he was prosecuting the petition on behalf of Mumbai Zopadpatti Rahivasi Sangh.

2. At the hearing of this petition, on behalf of the Petitioner, their learned counsel contends that the claim of the purchasers so also Respondent Nos. 3 and 4 had been rejected and in fact by order of 23.11.2000 the photo passes issued in favour of the said purchasers had been cancelled. The Purchasers are Shri. Khan Ali and Shri. Mohd. Isa. My

attention is then invited to the statement of one Mr. R.G. Jadhav and officer in the department who was then working as Tahsildar who has set out that the orders produced by the said two persons did not bear his signature and that they were residing in the building and it was not his duty to issue photo passes to the persons. It is also pointed out that the Purchasers had filed application before the Maharashtra Slum Area Tribunal being Misc. Application No. 55 of 2002 and Misc. Application No. 56 of 2002. These applications were disposed of as not maintainable. These were applications filed by the purchasers against Municipal Authorities not to demolish the structures. The Slum Tribunal however issued direction not to take any action for demolition of the structures till the disputes relating to claims of the said two persons which had been referred to the Government for consideration are disposed off.

. It is also submitted that earlier when the appeal from order filed by the Bombay Zopadpatti Rahivasi Sangh by order of 13.11.1992, learned Judge of this court had been pleased to issue certain directions of which some of the directions were as under :

"(ii) The 14 members of the appellant as mentioned at 31 are permitted to reconstruct their sheds of wooden poles tarpaulin cloth or plastic covers or

tin sheets of suit site. The prayer (c) of the said Notice of Motion is granted accordingly.

(iii) The Respondent No. 2 is directed to return the material of demolished structures which was ceased by it at the time of demolition.

(iv) The Respondent ;No. 2 is permitted to proceed against those structure by following due process of law."

. Based on the above, it is contended that these 14 persons are alone entitled to the structures and the predecessor of Respondent Nos. 3 and 4 are not entitled to any right. On the contrary it is pointed out that the persons entitled to were not allowed to put up their construction. Considering above, it is submitted that Respondent; Nos. 3 and 4 have no right and consequently relief as prayed for ought to be allowed.

. On the other hand on behalf of the Respondent Nos. 3 and 4 it is submitted that their rights to the structure has been upheld by the competent authority. It is pointed out that the Bombay Zopadpatti Rahivasi Sangh had filed contempt petition before this court being Contempt Petition No. 17 of 1998 on the ground that the Respondent Corporation were in contempt having failed to comply with the order of this court dated

13.11.1992 and appeal from Order No. 164 of 1992. That contempt petition came to be disposed of by order dated 23.6.1998 wherein contempt petition was dismissed. While dismissing the contempt petition, this court had noted as under :

"The Ward Officer has filed an Affidavit in which he has mentioned in Para 6 that the material were returned and on receiving the said material the structures were reconstructed. Thereafter he has pointed out that subsequent to notice u/s. 351 when inspection was carried out it is found that 11 persons other than those who occupied earlier were in possession". Hence, it becomes clear that the seized material was returned back and structures were reconstructed."

. Thereafter it is pointed out that subsequent to the notice under Section 351 after investigation were carried out, it was found that eleven persons other than those who occupied earlier were in possession. It is further pointed out that seven structures have been demolished and the some others filed suits in the City Civil Court.

. Apart from that it is pointed out that earlier when applications for issuance of photo passes were being considered, it was in respect of the cut off date of 1995 and in these circumstances, even if earlier photo passes issued to the predecessors of

the Respondent Nos. 3 and 4 were rejected, they were in the context of the Administrative instructions for protecting structures upto 1.1.1995. In appeal it was recommended that in the event the structures were existing to pass appropriate orders. This has been done by the Additional Collector. It is therefore, submitted that there is no merit in the contention as advanced on behalf of the Petitioners.

3. From the records, it be clear that the directions issued pursuant to the order passed in Appeal from Order No. 1164 of 1992 had been complied with. The Petitioner has not placed on record any material to indicate which of the persons covered by the order dated 13.11.1992 were not allowed to reconstruct premises, nor the area of the structures nor the exact location. It may also be mentioned at this stage that from what has been argued at the Bar Suit No. 1605 of 1998 had been withdrawn on 24.4.1990. It is in that suit which was withdrawn that the motion has been taken out in the year 1992 which was dismissed and against which the motion was preferred and directions were given. This seems not have been brought to the attention of the learned Judge when the order dated 13.11.1992 was passed in Appeal from Order No. 1164 of 1992 as the said Appeal against the order would not be maintainable in terms of Order 43 of C.P.C. The suit itself was

not subsisting.

. Be that as it may for the court to issue directions on account of mandamus the petitioner either in his personal capacity or as representative of the Association must show a legal right existing in their favour. That would include their right to a specified area in the property and the area of the earlier structure and that these structures are being occupied by Respondent Nos. 3 and 4. There is no such material to show that Respondent nos. 3 and 4 are occupying any structure which were occupied by the persons who were given relief in terms of Order dated 13.11.1992. Material further shows that out of the original occupants there were several new occupants. Therefore, it would not be possible on the material as it stands to hold that the Respondent Nos. 3 and 4 are occupying any structure which occupants on whose behalf Petitioner has filed the petition were entitled to. In order to issue mandamus, the petitioner was duty bound to disclose and make out a legal right in themselves. The petitioner has failed to do so, apart from relying on the order of this court dated 13.11.1992 in Appeal from Order. That order has been considered earlier.

4. Apart from that on facts, the right to structure have been held in favour of the

predecessors of the Respondents Nos. 3 and 4. The right of the Respondent to occupy the premises have also been upheld. These are purely findings of fact. The impugned order does not suffer from any error apparent on the face of record and consequently I find no merit in this petition.

. Rule discharged. No order as to costs.

(F.I. REBELLO,J.)